IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

CRP.No. 172 of 2005()

AGAINST THE ORDER DATED 20/11/2004 IN IA 298/2004 IN AS.133/2004 of ADDL. DISTRICT COURT, NORTH PARAVUR

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REVN. PETITIONER:

JOSHY, S/O.JOSEPH,
ARACKAL HOUSE, ELOOR SOUTH KARA,
VARAPPUZHA VILLAGE, PARAVUR TALUK.

BY ADV. SRI.K.RAVEENDRAN
SRI.M.S.ANIL KUMAR

RESPONDENTS:

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1. VYAPARI VYAVASAYI EKOPANA SAMITHI
WELFARE FUND, VARAPPUZHA BY THE SECRETARY,
RAJAN KUMAR, S/O.KRISHNA SHENOI,
EDAVAZHIKKAL HOUSE, THUNDATHUMKADAVU KARA,
VARAPPUZHA.

2. JAMES, S/O.GEROGE,
VEVUKATT HOUSE, KOONAMMAVU P.O.,
PARAVUR TALUK.

R1 BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.465/05 IN C.R.P.172/05

DISMISSED

17.7.2007 PIUS C.KURIAKOSE, JUDGE

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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C.R.P.No.172 OF 2005

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DATED THIS THE 17th JULY, 2007

O R D E R

Impugned in this Civil Revision Petition under Section 115 of the Code of Civil Procedure is the order of the District Judge dismissing an application filed by the petitioner who was the defendant in a money suit, for condoning the delay caused in the matter of preferring the appeal. Strictly speaking, the remedy of the petitioner would have been to prefer a Second Appeal against the judgment dismissing the appeal and raise in that Second Appeal a ground that the appellate court should have condoned the delay. However, I am of the view that on the facts of this case, it is not necessary to relegate the petitioner to that remedy. The delay in question was 177 days. The ground on which the delay was explained was that the petitioner on account of back ache was completely incapacitated, resulting in his inability even to contact the advocate and much less to prefer the appeal on time. The learned District Judge has found that no medical certificate is produced by the petitioner. The learned Judge also notices that even the name of the physician who treated the petitioner is not mentioned.

Of course, it has to be agreed that the affidavit submitted by the petitioner in support of the application for condonation of delay was inadequate. Nevertheless, having regard to the facts attending on this case, I feel that the delay could have been condoned, but only on terms.

2. Accordingly, setting aside the order dated 20.11.2004 in I.A.No.298 of 2004 in A.S.No.133 of 2004 and also the consequential judgment dismissing the appeal, I allow the I.A. subject to the following conditions:-

1. The petitioner shall pay a total amount of Rs.2500/- by way of costs, out of which Rs.1500/- shall be paid to the 1st respondent-plaintiff either directly or through their counsel and the balance Rs.1000/- shall be paid to the High Court Legal Services Committee, within one month from today.

2. There will be a further condition that the petitioner shall furnish security for the plaint claim within three months from today.

Once it is seen that the first condition is complied with by the petitioner, the lower appellate court will post the appeal for hearing. But the actual hearing and final disposal of the appeal will be made by the court only after it is ensured that the second condition is also

complied with. If the conditions are not complied with, the impugned order will stand confirmed.

The C.R.P. is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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